

EXHIBIT "D"

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November 18, 2004

Via E-mail

Richard C. Biedrzycki, Esquire
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Re: Boarhead Farm Litigation

Dear Mr. Biedrzycki:

This letter is in response to your letter dated November 12, 2004. The thrust of your letter seems to be that, having asked in multiple discovery requests for "everything," Ashland is now dissatisfied that Plaintiff agreed to produce "everything" in response. The second thrust appears to be that Ashland is unhappy that Plaintiff answered the precise request made, and not the request that Ashland intended to make. Nevertheless, this letter is a good faith attempt to respond to Ashland's various complaints about Plaintiff's discovery responses.

With respect to Interrogatory No. 1, that Interrogatory seeks detailed information about "each shipment of hazardous substances Plaintiff contends" was generated or transported to and disposed of at the Site. Plaintiff has formed no "contentions" as to any specific shipments of Ashland hazardous substances. Nevertheless, Ashland is well aware of the evidentiary basis concerning Ashland's transactions with AETC and AETC's transactions with DCC. Indeed, Ashland is itself in possession of that information. Ashland is also in possession of the transcripts of the depositions taken of each of the witnesses to date in this matter. The Document Repository contains the entire Administrative Record prepared by EPA up to issuance of the ROD. The documents in that Administrative Record, including, but not limited to, the RI/FS and the ROD identify a multitude of hazardous substances and other substances that were present in one or more media at the Site. Ashland is also aware that drums or drum fragments bearing

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Ashland Chemical labels were excavated at the Site as part of the OU-2 activities. These proofs collectively serve as the factual basis for Plaintiff's allegation that Ashland is a person liable under Section 107(a).

With respect to Interrogatory No. 2, the language of this Interrogatory is unintelligible. If, as you state in your letter, Ashland is seeking "the identity of the hazardous substances to be cleaned up as directed by EPA," then Ashland is asking Plaintiff to explain EPA's decision-making process for each of the many actions EPA has taken at the Site. EPA's decision-making process leading up to and including the issuance of the ROD is set forth in the Administrative Record compiled by EPA and in the ROD itself. Plaintiff believes that a complete copy of that Administrative Record is available in the Document Repository. With respect specifically to the response actions that Plaintiff is taking that are "directed by the EPA", the ROD sets forth EPA's "decision" in that respect. The ROD is, of course, based on the RI/FS, and upon other documents in the Administrative Record.

This Interrogatory and its subparts are additionally confusing because they repeatedly refer to "each Hazardous Substance." Persons are liable under CERCLA if they meet one of the statutory definitions in Section 107(a) and there has been "a release, or a threatened release which causes the incurrence or response costs, of a hazardous substance" Any such person is responsible for "necessary costs of response . . . consistent with the national contingency plan." Consistent therewith, Plaintiff's Third Amended Complaint alleges that there were releases or threatened releases of one or more hazardous substances at or from the Site, and that Plaintiff has incurred and will continue to incur in the future necessary costs of response that were and will be incurred consistently with the NCP. Complaint at ¶¶ 1, 23-24. Plaintiff's Complaint does not allege any list of specific hazardous substances that the EPA "directed" be cleaned up, nor does it allege, as each such hazardous substance, who generated that substance, who transported and disposed of it at the Site, who arranged for such transportation, or any of the other subsets of information sought in this Interrogatory. Whether or not Plaintiff will at some point in the future "contend" that any particular person or entity generated each and every hazardous substance identified by EPA as present in one or more media at the Site remains to be seen. Plaintiff's objection that Interrogatory No. 2(i) seeks information protected by the attorney-client and/or common interest privileges and/or the work-product doctrine is appropriate because this interrogatory subset seeks the identity of persons that "have information" about the subject matter of the subset, it is not limited to persons with personal knowledge. Thus, I personally have "information" about the subject matter because, *inter alia*, I sat through all of the Site Witness depositions taken in this matter.

With respect to Interrogatory Nos. 3, 4, 5, 8, 9 and 14, I read your letter as continuing to seek some form of statement by Plaintiff concerning the "equitable share of each party that Plaintiff presently believes is appropriate." None of these Interrogatories, however, asks for such a statement, and none be read to do so. Moreover, the Court in this matter will determine at trial "equitable shares" by "using such equitable factors as the court determines are appropriate." 42 U.S.C. § 9613(f)(1). Factual discovery is not yet complete. Expert discovery

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has not yet begun. Plaintiff has not "presently" formed a belief as to the any person's equitable share, and believes it would be grossly premature to do so before factual and expert discovery is completed. With respect to the schedules of costs and invoices, you were provided on September 15, 2004 by e-mail with tables tracking in great detail each dollar spent by Plaintiff in the performance of work pursuant to the two Consent Decrees, and copies of those tables along with complete invoice packages supporting those tables are available for inspection and copying in the Document Repository. On September 28, 2004, also by e-mail, you were provided with trust ledgers from the Pitney Hardin Kipp & Szuch accounts with respect to response costs payments. The files backing up those ledgers are available at Pitney Hardin Kipp & Szuch for inspection and copying. If you would like to review any of these schedules or the underlying invoice packages, simply call Michelle New in Philadelphia and she will make them available to you.

With respect to Interrogatory Nos. 11, 12 and 13, your letter asks that Plaintiff set forth "the dollar amounts of the Response Costs and attorney's fees claimed by Plaintiff." Plaintiff's Response Costs incurred to date are reflected in the de maximis tables previously produced reflecting response actions undertaken by Plaintiff pursuant to the Consent Decrees. Those costs continue every month. Plaintiff's Response Costs also include payments made to date and that will continue to made directly to EPA reimbursing EPA for EPA's Past Response Costs, Interim Response Costs, and Future Response Costs, as those terms are defined in the Consent Decrees. Copies of the invoices from EPA and payments made by Plaintiff with respect to those invoices are available for inspection and copying in the Document Repository. With respect to attorney's fees, Plaintiff does not now seek recovery of attorney's fees paid to PHKS. Plaintiff will make available for inspection and copying records concerning attorney's fees paid to Montgomery McCracken Walker & Rhoads for which Plaintiff is seeking recovery. Any of the records discussed in this paragraph are available by simply calling Ms. New.

With respect to Interrogatory Nos. 15, 16, and 18, Plaintiff does not understand why Ashland believes that Plaintiff has "overlooked" the language in those Interrogatories that refer to "each member" of the BFAG. Please explain the basis of Ashland's belief. Moreover, with respect to your statement that the Interrogatories are not vague, and that they "seek, quite simply, information as to each disposal site of the waste of each BFAG member during the relevant time period" please explain which language in which of the enumerated Interrogatories seeks such information. Plaintiff does not, and cannot, read any of those Interrogatories to seek such information.

With respect to Document Request No. 5, each response by Plaintiff to discovery served by other parties has been provided to Ashland. Documents made available by Plaintiff for inspection and copying in response to any such discovery requests were identified in those responses and will be made available to Ashland as well.

With respect to Document Request Nos. 6, 7 and 8, your letter does not explain what Ashland meant by the phrase "investigation files and other documents" but simply says the phrase is not vague or ambiguous. Please explain exactly what types of "files and other

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documents" you believe these requests involve, and Plaintiff will reconsider its vagueness objection. EPA's "investigation documents" are included in the Administrative Record in the Document Repository, because that is one of the elements of EPA Administrative Records. It is not Plaintiff's burden to go through EPA's Administrative Record to determine which elements of the Administrative Record constitute "investigation files and other documents." Moreover, Plaintiff strongly disagrees with the suggestion in your letter that pages from deposition transcript of persons unaffiliated with Plaintiff and documents created by others do not constitute attorney work product when combined by an attorney into discreet files specific to particular defendants or other persons. It is the very decision to include some or all of a particular transcript or document in such a file that constitutes attorney work product. As stated in Plaintiff's objection, any such documents, transcripts, or portions thereof that might be contained in files created and maintained by Plaintiff in anticipation of or as part of this litigation are privileged even though the documents and transcripts themselves may not be. In any event, any such documents and transcripts or portions thereof so assembled have been produced in their entirety as part of this litigation.

With respect to Document Request No. 9, you have been provided by e-mail with copies of settlement agreements entered into to date with Defendants in this litigation. Additional copies of those documents are available by simply phoning Ms. New. You have been provided with two settlement agreements with the United States (on behalf of the Navy), both of which have been filed with the Court in conjunction with Motions to approve those settlements. The Document Repository contains two Administrative Consent Orders and two Consent Decrees that constitute settlements between the Plaintiffs and EPA. Those documents are available by phone call to Ms. New.

With respect to Document Request No. 10, almost any communication by anyone in the world and having to do with the Boarhead Farm Site could be a communication "relating to the presence of and clean-up of hazardous substances at the Site." It is thus very unclear exactly what "communications" Ashland is seeking by this request. In any event, Plaintiff has made available in the Document Repository all reports and correspondence by it to USEPA and PADEP or from those agencies to Plaintiff. They can be immediately identified on the index to the Document Repository.

With respect to Document Request No. 11, the phrase "documents embodying, evidencing, referring or relating to any and all agreements entered by BFAG relating to the clean-up of the Site" could be read to refer to the two Administrative Consent Orders, the two Consent Decrees, the various agreements of the OU-1 and OU-2 Groups, contracts between Plaintiff and the various Site contractors, and every single piece of paper reporting on, dealing with, or otherwise discussing the clean-up work, including each and every invoice, cover letter, payment check, cover letters thereto, etc. The request is thus, vague, confusing, ambiguous, overbroad, and unduly burdensome.

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With respect to Document Request No. 12, please identify what categories of documents Ashland believes would be documents that "designate or refer to BFAG, including its members, as Potentially Responsible Parties."

With respect to Document Request Nos. 15-17, explaining that Ashland believes that the documents sought in this Request "go to the very heart of Plaintiff's claims and allegations," does not clarify what types of documents Ashland is seeking. Please identify by category or otherwise what type of documents Ashland believes would be responsive to Request Nos. 15-17.

Finally, I do not understand the second to last sentence in your letter. Plaintiff fully intends to pursue discovery from or relating to Ashland, including the relief sought in our Motion to Compel and any and all depositions we wish to take relevant to Ashland. Indeed, Ashland was granted an extension of time to respond to that Motion at least in part because of your representation that at least one purpose for the extension of time was so that Ashland and Plaintiff could try to amicably resolve the deficiencies in the Ashland discovery responses identified in the Motion. The one and only communication from you that could be characterized as such an attempt is one in which you asked that the Motion with withdrawn in return for nothing whatsoever further from Ashland in terms of either information or document production.

Very truly yours,



Glenn A. Harris

GAH/dmn

cc: Counsel on Attached List

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